Filed 5/30/19 P. v. Garcia CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. GUSTAVO GARCIA, Defendant and Appellant.	B291020 (Los Angeles County Super. Ct. No. BA205879)

APPEAL from an order of the Superior Court of Los Angeles County, Craig Richman, Judge. Affirmed.

Law Office of Mark A. Davis and Mark A. Davis for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Gustavo Garcia appeals from an order denying a motion to reduce a felony conviction to a misdemeanor under Penal Code section 17, subdivision (b).[1] Based on our conclusion that the trial court did not abuse its discretion when it denied Garcia's motion, we affirm the trial court's order.

BACKGROUND

In 1997, Garcia was convicted of one count of misdemeanor domestic violence under section 243, subdivision (e)(1). On October 3, 2000, the Los Angeles County District Attorney filed an information charging Garcia with two counts of domestic violence under section 273.5, subdivision (a), one count of child abuse under section 273a, subdivision (a), and one count of first degree residential burglary under section 459. On February 21, 2001, Garcia pled guilty to one count of domestic abuse under section 273.5, subdivision (a); the remaining three counts alleged against him were dismissed as part of the plea negotiation. The trial court sentenced Garcia to probation for five years, including 365 days in county jail as a term of the probation. Garcia was also required to attend domestic violence counseling every week for a year, among other terms of his probation.

Garcia completed his probation. In 2014, he moved the trial court for an order setting aside the guilty plea, entering a not guilty plea, and dismissing the information under sections 1203.4 and 1203.4a. The trial court granted Garcia's motion.

In April 2018, Garcia moved the trial court for an order reducing the 2000 conviction (based on Garcia's guilty plea) from a felony to a misdemeanor under section 17, subdivision (b). The

[1] Statutory references are to the Penal Code.

trial court denied Garcia's motion. Garcia filed a timely notice of appeal.

DISCUSSION

" 'The Legislature has classified most crimes as *either* a felony or a misdemeanor, by explicitly labeling the crime as such, or by the punishment prescribed.' [Citation.] However, there is a special category of crimes that is punishable as either a felony or a misdemeanor, depending on the severity of the facts surrounding its commission. [Citation.] These crimes, referred to as 'wobblers,' are 'punishable either by a term in state prison or by imprisonment in county jail and/or by a fine.' [Citation.] The conduct underlying these offenses can vary widely in its level of seriousness. Accordingly, the Legislature has empowered the courts to decide, in each individual case, whether the crime should be classified as a felony or a misdemeanor. In making that determination, the court considers the facts surrounding the offense and the characteristics of the offender." (*People v. Tran* (2015) 242 Cal.App.4th 877, 885 (*Tran*).)

"The trial court has discretion to 'reduce a wobbler to a misdemeanor either by declaring the crime a misdemeanor at the time probation is granted or at a later time—for example when the defendant has successfully completed probation.' . . . [¶] The purpose of the trial judge's sentencing discretion to downgrade certain felonies is to 'impose a misdemeanor sentence in those cases in which the rehabilitation of the convicted defendant either does not require, or would be adversely affected by, incarceration in a state prison as a felon.' [Citation.] The reduction of a wobbler to a misdemeanor is not based on the notion that a wobbler offense is 'conceptually a misdemeanor.' [Citation.] Rather, it is 'intended to extend misdemeanant

treatment to a potential felon' and 'extend more lenient treatment to an offender.' [Citation.] 'When the court properly exercises its discretion to reduce a wobbler to a misdemeanor, it has found that felony punishment, and its consequences, are not appropriate for that particular defendant. [Citation.] Such a defendant is not blameless. But by virtue of the court's proper exercise of discretion, neither is such defendant a member of the class of criminals' convicted of an offense the Legislature intended to be subject to felony punishment." (*Tran*, *supra*, 242 Cal.App.4th at pp. 885-886.)

The "criteria that inform the exercise of section 17(b) discretion" are " 'the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.' [Citations.] When appropriate, judges should also consider the general objectives of sentencing such as those set forth in California Rules of Court, rule [4.410(a)]." (*People v. Superior Court* (*Alvarez*) (1997) 14 Cal.4th 968, 978.) "General objectives of sentencing include: [¶] (1) Protecting society; [¶] (2) Punishing the defendant; [¶] (3) Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses; [¶] (4) Deterring others from criminal conduct by demonstrating its consequences; [¶] (5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration; [¶] (6) Securing restitution for the victims of crime; [¶] (7) Achieving uniformity in sentencing; and [¶] (8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices." (Cal. Rules of Court, rule 4.410(a).)

Garcia contends the trial court abused its discretion when it denied his motion to reduce his felony conviction to a misdemeanor. Garcia argues that the trial court's sole consideration was Garcia's 1997 misdemeanor domestic violence conviction, but the trial court *should* have considered (and did not) Garcia's conduct on probation, his post-probation behavior, his efforts at rehabilitation, and the longevity and duration of Garcia's rehabilitation. At the hearing on Garcia's motion, the trial court stated: "[A]s I stated previously, had it been Mr. Garcia's only conviction for domestic violence I would be persuaded by your argument. But the fact that it is not makes your argument unpersuasive. The motion to reduce is denied." That statement, Garcia explains, is evidence that the trial court did not consider *anything* other than Garcia's earlier misdemeanor domestic violence conviction in its determination whether to reduce the felony domestic violence conviction to a misdemeanor.

We disagree with Garcia's characterization of the trial court's exercise of its discretion. The trial court's statement that it "would be persuaded by" Garcia's argument if the 2000 domestic violence conviction was Garcia's only conviction is itself a declaration that the trial court weighed various factors against one another to determine whether to grant Garcia's motion. The trial court considered Garcia's conduct on probation, his post-probation behavior, his efforts at rehabilitation, and the longevity and duration of the rehabilitation.

The trial court also considered, as it must, and as evidenced by its statements on the record, the deterrent effect of demonstrating the consequences of a domestic violence conviction and the reduction in recidivism that escalated sentencing for

repeat offenders seeks to remedy.[2] "It's not a question of time," the trial court said. "It's a question of he didn't learn his lesson the first time. He hit his significant other again, and he had to be placed on felony probation[] in order to cure the behavior. Misdemeanor probation didn't cure the behavior." For the trial court charged with determining whether to reduce a wobbler, those factors outweighed Garcia's good behavior after his second domestic violence conviction.

We also disagree with the necessary implication of Garcia's contentions here; that if a defendant successfully completes probation and does not continue to commit crimes, the defendant is entitled to reclassification of the offense. "A convicted defendant is not *entitled* to the benefits of section 17(b) as a matter of right. Rather a reduction under section 17(b) is an act of leniency by the trial court, one that 'may be granted by the court to a seemingly deserving defendant, whereby he [or she] may escape the extreme rigors of the penalty imposed by law for the offense of which he [or she] stands convicted.' " (*Tran*, *supra*, 242 Cal.App.4th at p. 892.)

The trial court considered the record that was before it and considered the factors it was required to consider when it exercised its discretion to deny Garcia's motion. We find no abuse of discretion.

---

[2] "Relevant factors enumerated in the[California Rules of Court] must be considered by the sentencing judge, and will be deemed to have been considered unless the record affirmatively reflects otherwise." (Cal. Rules of Court, rule 4.409.)

DISPOSITION

The trial court's order is affirmed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

BENDIX, J.

LEIS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.